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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-577

SEP 10 3 32339

In re Applications of)	MM Docket No. 93-156	BY
)		
TRINITY CHRISTIAN CENTER OF)	File No. BRCT-911129KR	
SANTA ANA, INC., d/b/a)		
TRINITY BROADCASTING NETWORK)		
)		
For Renewal of License)		
of Station WHSG(TV))		
Monroe, Georgia)		
)		
and)		
)		
GLENDAL E BROADCASTING COMPANY)	File No. BPCT-920228KE	
)		
For Construction Permit)		
Monroe, Georgia)		

MEMORANDUM OPINION AND ORDER

Issued: September 8, 1993 ; Released: September 10, 1993

1. Under consideration are "Motion For Summary Decision" filed July 9, 1993 by Glendale Broadcasting Company (Glendale), Mass Media Bureau's Opposition to Motion For Summary Decision filed August 3, 1993; "Countermotion For Summary Decision" filed August 3, 1993 by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (TBN), Opposition To Countermotion For Summary Decision filed August 12, 1993 by Glendale, and Mass Media Bureau's Opposition To Countermotion For Summary Decision filed August 17, 1993.

2. Glendale seeks summary decision on designated issue 1(a), the short-spacing waiver issue specified against Glendale in the Hearing Designation Order, 8 FCC Rcd 4038 (1983) (HDO). The HDO specified the short-spacing issue because Glendale's proposed transmitter site is short-spaced by 18.4 km to the reference point for the vacant allotment at Channel 63, Montgomery, Alabama. WHSG(TV) is currently operating from a location which is short-spaced to the same reference point by 18.14 km. Glendale contends a waiver is warranted because a grant of its application would result in only an increase of .26 km over the current short-spacing between WHSG and the Channel 63 reference point.

3. Summary decision is warranted "only where the truth is clear, where the basic facts are undisputed, and the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts". Big Country Radio, Inc., 50 FCC 2d 967, 968 (Rev. Bd. 1975). Glendale has failed to satisfy this stringent standard.

4. Glendale is correct in asserting that it is entitled to be treated the same as the incumbent licensee. See EZ Communications, Inc., 8 FCC Rcd 2448 (MMB 1993); Royce International Broadcasting, 2 FCC Rcd 1368 (MMB 1987). However, Glendale's proposal would result in an increase in short-spacing of .26

km over the current short-spacing between WHSG and the Channel 63 reference point. Glendale claims that this increase is de minimis, but provides no supporting authority for this contention. Glendale's reliance on Kenter Broadcasting Co., 62 RR 2d 1573, 1577, n. 9 (1986), is misplaced. The Commission there stated that short-spacing of one mile or 1.6 kilometers was the outer limits of the de minimis exception. Kenter is not applicable here and provides no basis for grant of its request since the total distance by which the proposed site is short-spaced far exceeds 1.6 kilometers.

5. Glendale also claims that its waiver request should be summarily resolved because its proposal would cause less interference to a station operating on Channel 63 than a fully spaced station operating with maximum facilities. Glendale contends that in Sarkes Tarzian, Inc., 6 FCC Rcd 2465 (1991), the Commission relied on the fact that the potential interference from a short-spaced station would be no greater than it would be from a fully spaced site using maximum facilities, in granting a waiver of its short-spacing rules. Additionally, Glendale claims there will still be a more than adequate area within which a potential applicant for Channel 63 could locate a transmitter and be fully spaced with Glendale's proposal.

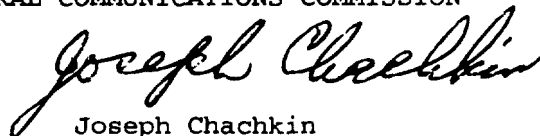
6. These additional claims are not sufficient to justify grant of its request for summary decision. In Sarkes Tarzian, the applicant's claim that it would provide protection equivalent to that provided by a fully spaced station operating at maximum power was only one part of the applicant's public interest showing in support of a waiver. In addition to demonstrating that it would provide equivalent protection, the applicant showed that a grant of the waiver would result in the provision of significant gains in service, including additional television service to underserved areas. Glendale has made no showing that such public interest benefits will accrue as a result of a grant of its waiver request. Finally, the fact that there may be a geographical area in which a fully spaced Channel 63 station could be placed, does not moot the need for a hearing on the designated waiver issue. Glendale's motion for summary decision will be denied.

7. TBN's counter motion to have the issue summarily resolved against Glendale will also be denied. TBN has failed to demonstrate that there is no genuine issue of material fact remaining for determination at the hearing. The issue calls for a determination whether circumstances exist which would warrant a waiver of Section 73.610 of the Rules. TBN has provided no reason why Glendale should not be afforded an opportunity to demonstrate that the public interest would be served by grant of its waiver request.

Accordingly, IT IS ORDERED, That the "Motion For Summary Decision" filed July 9, 1993 by Glendale Broadcasting Company IS DENIED.

IT IS FURTHER ORDERED, That the "Countermotion For Summary Decision" filed August 3, 1993 by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge